



# Public Knowledge

July 1, 2011

Marlene H. Dortch, Esq.  
Secretary  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, D.C. 20554

Re: MB Docket No. 10-91, MB Docket No. 10-71, MB Docket No. 07-269, WC Docket No. 10-90, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, and CC Docket No. 96-45

Dear Ms. Dortch,

On June 30, 2011, Harold Feld, John Bergmayer, Rashmi Rangnath, and Meredith Filak from Public Knowledge ("PK"), attended five meetings. The first meeting was with Joshua Cinelli, David Van Fleet Bloys, and James Bangasser from the office of Commissioner Copps, on the topics of retransmission consent, program carriage, and the Multichannel Video Programmer Distribution (MVPD) Competition Report. The second meeting was with Margaret McCarthy from the office of Commissioner Copps, where PK discussed the Commission's NPRM regarding the Universal Service Fund (USF). The third meeting was with David Grimaldi and Jonathan Whitaker from the office of Commissioner Clyburn, where PK discussed media issues. The fourth meeting was with Angela Kronenberg from the office of Commissioner Clyburn, where PK discussed the USF. The fifth meeting was with Erin McGrath from the office of Commissioner McDowell on the topics of retransmission consent, program carriage, and the Multichannel Video Programmer Distribution (MVPD) Competition Report.

Regarding retransmission consent, PK stressed to the Commission that collecting comprehensive pricing data on the market is not necessary for the agency to use its authority to institute boundaries and requirements concerning parties that choose not to negotiate retransmission agreements in good faith. PK also encouraged the FCC to consider developing a process for filing complaints even if it decided not to pursue any of the AllVid proposals at this time.

Regarding the MVPD Competition Report, PK highlighted its comments on the proceedings and noted that the Commission raised valuable questions about online video. PK discussed that this inquiry presents a great opportunity for the FCC to broaden the scope of what is considered an MVPD and consider the innovative way in which the field of video program distribution is changing. PK proposed that the Commission adopt a procedure that allows online video distributors to self-determine whether they want to be classified as an MVPD, similar to how some entities can choose to be common carriers. Regardless of the regulatory classification of an OVD, anticompetitive acts against OVDs by MVPDs should be prohibited under Section 628. The optional MVPD status will promote innovation and development in the market by allowing online businesses to experiment with new models and not be unduly burdened. PK recognized that updating the regulatory regime will involve components outside of the FCC's jurisdiction such as copyright, particularly 17 U.S.C §111 for cable compulsory licenses, but encouraged the Commission to coordinate with the Copyright Office to facilitate consistent, uniform regulations. PK also emphasized that in order to promote growth in the market there needs to be a formal process by which a programmer can file a complaint

of possible discriminatory actions and have their complaint properly adjudicated by the Commission within a reasonable timeframe. This process could be similar to one currently used for program access which allows for discovery, requirements for a prima facie case, and optional alternative dispute resolution.

Regarding USF, PK also highlighted its comments on the Notice of Proposed Rulemaking. PK stressed that, in order to better serve hardest-to-reach areas, recipients of USF support should be required to provide interconnection to neighboring un-served areas or areas that bidder isn't serving. PK also suggested that a small portion of the USF should be set aside to provide funds for one-time equipment purchases in a manner similar to the now-defunct Technology Opportunity Program. PK also stressed the need to consider metrics other than upload/download speed when considering comparability of service to rural areas, including network management practices, reliability, and data usage caps, among others. Moreover, PK proposed the classification of interconnected voice over internet protocol (interconnected VOIP) connections as a Title II service. PK emphasized that interconnected VOIP fits the definition of a telecommunication service under Title II. Classification would provide the Commission with needed clear authority to act on a number of proposals, and that classifying interconnected VOIP as a title II service would not require the adoption of a specific intercarrier compensation regime. The Commission would only need to ensure interconnection as required by Section 251(a) and just and reasonable rates and practices as required by Sections 201 and 202. PK also highlighted the position in its comments to the NPRM that SMS is clearly a Title II service and, in addition, that proper functioning of the USF requires the Commission to classify text messaging as a Title II service.

Sincerely,

/s Meredith Filak  
*Law Clerk*  
Public Knowledge